IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

MISCELLANEOUS CIVIL APPLICATION NO. 412 OF 2006
IN
WRIT PETITION NO. 2481 OF 2005 (DECIDED).

Kailash @ Siddeshwar Mahadeorao
Deshmukh and four others. ... APPLICANTS

VERSUS

Dr. Wamanrao R. Korpe and 21 others. ... RESPONDENTS

....

Shri R.K. Deshpande, Advocate for the applicants.
Shri A.M. Ghare, Advocate for the respondents.

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CORAM : B.R. GAVAI, J.

ORDER RESERVED ON : 22ND SEPTEMBER, 2006

ORDER PRONOUNCED ON : 27TH SEPTEMBER, 2006

ORDER:

By way of present application, the applicants seek review of the judgment and the order passed by this Court dated 11th August, 2005 in Writ Petition No. 2481 of 2005.

2. Heard Shri R.K. Deshpande, the learned Counsel appearing on behalf of the applicants and Shri A.M. Ghare, the learned Counsel appearing on behalf of the respondents.

3. Shri R.K. Deshpande, the learned Counsel for the applicants submits that there is an error apparent on the face of record in the judgment and the order of which review is sought and, therefore, the same needs to be reviewed. He submits that the powers under Section 41-A of the Bombay Public Trusts Act (hereinafter referred as the said Act) are administrative in nature. In support of this proposition, he relies on the judgment of the learned Single Judge of this Court in the Case of **Asaram Bhimrao Shinde and others .v. State of Maharashtra and others (reported in 2001 (4) Mh.L.J., 548)**. He further submits that the learned Assistant Charity Commissioner did not have jurisdiction into the question of voters list under Section 41-A and, therefore, the direction of this Court to the effect that the Superintendent of the office of the Assistant Charity Commissioner would act as an Election was without jurisdiction. He relies on the judgment of this

Court in the case of **Lahudas Sambhaji Karad .v. State of Maharashtra and others (reported in 1993 Mh.L.J., 1056)**. He, therefore, submits that taking into consideration of this aspect and particularly that the powers exercised by the authorities were administrative in nature, in accordance with the High Court Appellate Side Rules, 1960, the petition ought to have been filed before the Division Bench of this Court. He submits that the Single Judge could not have entertained the present petition and passed the judgment and order of which review is sought. Seeking support from the judgment of the Apex Court in the case of **Pandurang and others .v. State of Maharashtra (reported in 1986 Mh.L.J., 994)**, he submits that the judgment and the order passed by this Court was in nullity and, therefore, needs to be reviewed.

4. Shri R.K. Deshpande, the learned Counsel further submits that since the earlier view of this Court was not taken into consideration by this Court while passing the judgment and order of which review is sought, it is a good ground for review. He further submits that the relevant Rules and relevant

facts were not brought to the notice of this Court and, therefore, judgment and order needs to be reviewed. He relies on the judgment of the Apex Court in the case of **Ashok Kumar Pattanaik and others .v. State of Orissa and another (reported in 1998 (6) SCC, 176)** in support of this proposition.

5. Shri A.M. Ghare, the learned Counsel for the respondents submits that the LPA preferred by some of the parties whose interest is common with that of the present applicants and wherein the present applicants were also heard has been decided by this Court by an order dated 14th August, 2006. He submits that in the said LPA,the Division Bench has taken a view that the jurisdiction exercised by this Court was under Article 227 of the Constitution of India. Relying on the judgment of the Apex Court in the case of **Kunhayammed and others .v. State of Kerala (reported in AIR 2000 SC 2587)**, he submits that once the order of the lower Court is decided in appeal and appeal is dismissed maintaining the order passed by the lower Court, the order passed by the lower Court gets merged into the order passed by the appellate Court and

review against the order passed by the lower Court is not maintainable. Relying on the judgment of the Apex Court in the case of **Sree Narayana Dharmasanghom Trust .v. Swami Prakasananda and others (reported in 1997 (6) SCC 78)**, he submits that after dismissal of SLP by Supreme Court a review is not permissible in High Court on the principle of merger. Relying on the case **Gopabandhu Biswal .v. Krishna Chandra Mohanty and others (reported in 1998 (4) SCC 447)**, he submits that even a review by third party is not permissible after the dismissal of SLP. Relying on the judgment of Apex Court in the case of **Haridas Das .v. Usha Rani Banik and others (reported in 2006(4) Mh.L.J., 14)**, he submits that unless there is an error apparent on the face of record, the case for review is not made out. He submits that an erroneous judgment cannot be corrected in review.

6. Relying on the judgment of the Division Bench of this Court in the case of **Maha Pragya Vidya Nidhi Foundaotion and another .v. State of Maharashtra and others (reported in**

2006(4) Mh.L.J., 50), he submits that the Assistant Charity Commissioner under Section 41-A had a jurisdiction to go into the issue of membership and in that view of the matter, the judgment of the learned Single Judge in the case of Lahudas (cited supra) would not be a good law.

7. Elaborate arguments were also advanced on merits. However, since I find that the present review application is not maintainable on more than one grounds, it is not necessary to reproduce the contentions raised on merits. Vide the judgment and order of which review is sought the petitioners therein had challenged the order passed by the learned Assistant Charity Commissioner, Akola Region, Akola dated 10th May, 2005 to the extent that the said authority had rejected the prayer of the petitioners therein for appointment of an independent Election Officer. Vide the said order, the learned Assistant Charity Commissioner had also directed the elections of the Trust to be held within a period of two months. This Court, after considering the rival contentions and after prima facie finding that the allegations of the petitioners that the

record of the Trust was being fabricated by the respondent Nos.1 to 3 cannot be said to be ill founded, found that it was just and proper in the interest of the Trust that the elections be held by the independent officer. This Court finding that, taking into consideration the nature of controversy and the allegations, it was necessary for the Assistant Charity Commissioner to have directed the election to be held by appointing an Election Officer who was an independent officer, issued the following directions.

> "(i) The elections to the Managing Committee of the respondent No.9, Trust shall be held under the supervision of the Superintendent from the office of the Assistant Charity Commissioner, Akola.
>
> (ii) The said elections shall be conducted within a period of two months from today.
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> (iii) That the Election Officer i.e. Superintendent from the office of the Assistant Charity Commissioner shall conduct an enquiry so as to verify who were the persons really enrolled as members prior to 10th May, 2005. For that matter, the

Superintendent may permit the parties to advance their submissions and also to produce material in support of their contentions. The enquiry be completed within a period one month from today.

(iv) The record which has been submitted by the respondent Nos.1 to 3 be placed in the custody of the said Election Officer. The respondent Nos.1 to 3 are directed to handover the copy of Ledger latest by tomorrow (12th August, 2005) evening to the Election Officer.

(v) In so far as the directions which are passed in the other order dated 10th May, 2005, thereby putting restraints on the activities of the respondent Nos.1 to 3, they shall continue to operate till the new Managing Committee is elected."

8. In pursuance to the order passed by this Court and specifically in view of the Direction No. (iii), the Election Officer appointed vide said order held the enquiry as to who were enrolled as member prior to 10th May, 2005 and found that 37 persons were enrolled as members of the Trust by preparing false documents and a such they cannot be treated

as members of the Trust. At this stage, it may be stated that the direction so made by the Court was for the purpose of finding of the eligibility of the members who were entitled to vote in the elections. As such, the order of the Election Officer dated 08.09.2005 will have to be read in that perspective.

9. Being aggrieved by the said order dated 08.09.2005, the present applicants preferred Writ Petition No. 4728 of 2005. However, the Division Bench found that it was appropriate to seek review of the order passed by this Court and, therefore, the applicants preferred the present Application.

10. In the meanwhile, the contesting respondents in Writ Petition No. 2481 of 2005 had challenged the order of which review is sought by filing Letters Patent Appeal No. 226 of 2005. The same has also been rejected by an order dated 14th August, 2006.

11. The scope of review is well defined by the Apex Court and various High Courts in catena of decisions. The Apex Court in the case of Haridas Das .v. Usha

Rani Banik and others (cited supra) has quoted the observations of the Apex Court in the case of *Thungabhadra Industries Ltd. .v. Govt. of A.P. (AIR 1964 SC 1372)*, as under -

> "There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by `error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. ... where without any elaborate argument one could point to the error and say here is substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

It can thus be seen that the Apex Court has held that to constitute an error on the face of record, it should be such an error which one could point out without any elaborate argument and say there is a substantial point of law which stares one in the face and there could reasonably be no two

opinions entertained about it. However, it is to be noted that the present review application itself was argued for hours.

11. The order impugned in the present petition was passed by the learned Assistant Charity Commissioner after hearing the parties. It was a detailed order citing reasons therefor. Chapter XVII Rule 18 Clause (3) and the explanation thereto read thus.

> "[**18. Single Judge's powers to finally dispose of applications under Article 226 or 227**. - Notwithstanding anything contained in Rules 1, 4 and 17 of this Chapter, applications under Article 226 or under Article 227 of the Constitution (or applications styled as applications under Article 227 of the Constitution read with Article 226 of the Constitution) arising out of -
>
> (1) ...
> (2) ...
> (3) the decrees or the orders passed by any Subordinate Court [or by any quasi Judicial Authority] in any suit or proceeding (including suits and

proceedings under any Special or Local Laws), but excluding those arising out of the Parsi Chief Matrimonial Court and orders passed under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; the Administrative Tribunals Act, 1985; and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Explanation. - The expression "order" appearing in clauses (1) to (41) means any order passed by any judicial or quasi judicial authority empowered to adjudicate under the above mentioned statutes.]"

12. It cannot be disputed that the learned Assistant Charity Commissioner is a quasi judicial authority. In view of the judgment in the case of Maha Pragya Vidya Nidhi Foundaotion and another .v. State of Maharashtra and others (cited supra), it can also be seen that the Charity Commissioner is empowered to go into the issue of Section 41A of the said Act. In view of the judgment of the Division Bench, the reliance placed on the judgment in the case of

Lahudas Sambhaji Karad .v. State of Maharashtra and others (cited supra) by the applicants which is delivered by the learned Single Judge, in my view, is not well placed. In the present proceedings before the learned Assistant Charity Commissioner, he was deciding the rival claims of the two groups pertaining to the election of the Trust. Thus the petition was filed before the Single Judge. In that view of the matter, the petitioner invoked the jurisdiction of this Court under Article 227 of the Constitution of India and this Court also exercised the jurisdiction under Article 227 of the Constitution of India. As such, in view of Rule 18(3) and the Explanation of Chapter XVII of the High Court Appellate Side Rules, the petition was required to be heard by the Single Judge. In that view of the matter, I am unable to accept the contentions of the applicants in that regard. In any event, the respondents to the said objection had challenged the order of this Court by way of LPA No. 226/2005. In the said LPA, the present applicants had also moved an application for intervention. While dismissing the said LPA, the Division Bench has found thus.

> "The impugned judgment, apart from ex-facie disclosing that the same has been passed in exercise of the jurisdiction under Article 227 of the Constitution, the findings arrived at and the reasoning in support thereof in the judgment, reveal that the learned Single Judge has exercised his writ jurisdiction firstly on account of refusal by the lower authority to exercise its jurisdiction under the Bombay Public Trust Act in relation to the manner of holding election of the trustees and secondly on account of arbitrary exercise of powers by the lower authority in the sense that it failed to issue directions for independent officer to hold the election in spite of existence of serious disputes between two groups and serious allegations having been made regarding tampering of records. Obviously, therefore, such an exercise of jurisdiction by the learned Single Judge is squarely in terms of powers under Article 227 of the Constitution."

13. It can thus be seen that the judgment and order passed by this Court has merged into the appellate order. The learned Members of the Division Bench have also held that the

jurisdiction exercised by this Court was under Article 227 of the Constitution of India. The Apex Court in the case of Kuhayammed and others .v. State of Kerala and another (cited supra) has observed thus.

"Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation. On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 of the CPC."

14. In the case of Gopabandhu Biswal .v. Krishna Chandra Mohanty and others (cited supra), the Supreme Court while considering the question as to whether the persons who were not parties before the Tribunal could entertain a review application before the Tribunal after SLP challenging the order

of the Tribunal was dismissed, has observed thus.

> "... We will assume for the time being that the applicants are persons aggrieved. Even so, the question is whether they can have a judgment which has attained finality by virtue of an order of this Court, set aside in review. There is no doubt that as between the parties to the main judgment, the judgment is final and binding. The respondents, State of Orissa and Union of India, are, therefore, bound to give effect to the judgment of the Tribunal in TA No. 1 of 1989 in the case of Gopabandhu Biswal. If this is so, can a third party by filing a review petition get that same judgment reviewed and obtain an order that Gopabandhu Biswal is not entitled to the benefits of the directions contained in the main judgment since that judgment is now set aside ? In our view this is wholly impermissible. It will lead to reopening a matter which has attained finality by virtue of an order of this Court."

15. In that view of the matter, I find that even if the present applicants are considered to be aggrieved persons, the remedy of review after the order passed by this Court has been

confirmed by the appellate Court in LPA, is not available to them. As such, I do not find that there is an error apparent on the face of record to entertain the present review application. Hence, rejected.

16. This Court, vide order under review, had directed the elections to be held within a period of two months from the date of the order. However, in view of the interim order passed in Writ Petition No. 2481 of 2005, the Election Programme came to be stayed from the stage of submission of nominations. In view of the rejection of the present review application, interim order stands automatically vacated. The Election Officer, therefore, shall complete the election process within a period of four weeks from today.

17. At this stage, Shri Deshpande, the learned counsel for the applicant, submits that since the interim order was operating for a considerable length of time, same may be extended for a period of four weeks.

18. Shri Ghare, the learned counsel appearing for respondents, vehemently opposes the request on the ground that the elections have been withheld for months together.

19. However, taking into consideration the fact that the interim order is operating for a considerable length of time, I am inclined to grant the prayer made by the learned counsel for the applicants. Interim order shall continue for a period of two weeks from today.

(B.R. GAVAI),
JUDGE

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